

Dear Sir/Madam,

**COMMENTS ON THE USA NOTIFICATION (G/TBT/N/USA/32)**

Enclosed please find Indonesia's comments on the above USA TBT notification. We would very much appreciate if you could include these comments into your further considerations. Thank you.

Sincerely,

**T.A.R. Hanafiah**

Center for Cooperation on Standardization,  
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(As the Notification Body/Enquiry Point of Indonesia)

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**COMMENTS ON THE USA NOTIFICATION (G/TBT/N/USA/32) ENTITLING  
REGISTRATION OF FOOD FACILITY UNDER THE PUBLIC HEALTH  
SECURITY AND BIOTERRORISM PREPAREDNESS AND RESPONSE TO  
ACT OF 2002)**

1. The government of Indonesia (GOI) understands that each country has a right to take necessary measures for protecting its essential security interest as well as for protection of human, animal, or plant life or health within its own territory at the appropriate levels.
2. The GOI understands that tighter regulations and measures taken by the US Government to prevent disturbances are somehow as the impact of the September 11, 2001 tragedy.
3. However, any measures taken, according to TBT-WTO agreement, shall be applied in less restrictive manners to fulfill the legitimate objectives. The GOI concerns that the measures/policies taken by the US government regarding Bioterrorism may even be contradictive to the effort of international trade liberalization and may affect not only to US but also the trading partner as well as world economy.
4. The GOI is in opinion that provisions made to protect safety and security of foods and drugs supplies introduced in title III of Bioterrorism Act signed on June 12, 2002 are in fact unnecessary new measures that impede import transactions which eventually limit choices for food for the US consumers following the regulations set in Consumer Protection and Product Safety, Packaging, Nutrition Labeling, HACCP, Container Security Initiative (CSI), the Custom -Trade Partnership Against Terrorism (C-TPAT), Operation Liberty Shield etc.
5. Therefore, the GOI strongly requests the US Government to implement the regulations in such a way as transparent, easy, inexpensive, and unrestrictive to trade, in line with the right and obligation of WTO member countries and far from disguised protection practices as well as to monitor and evaluate the adverse effect of the implementation of the regulation for reviewing at least during the first 6 months after the proposed regulation is adopted.
6. In the light of not creating unnecessary obstacles to trade, we do hope that the regulation on facilities registration will cover only minimum information necessary for the registration.
7. In order to precisely interpret the provisions set in section 305, we request USFDA to provide a list of foods (up to the 7th digit number of the HS) subjected to registration.
8. Exporters of Seafood/fishery products have previously registered in accordance with the provision of 21 CFR 123. Therefore in this new provision

of facility registration they should be exempted or at least only give information, which is lacking.

9. Definition of agent is not clear, leading to misinterpretation. There are many “agents” exist in trade such as agent for importing, or agent for distributor etc. Besides, the Act strictly requires the foreign facility to appoint an agent for the food products concerned imported to the US. Based on the FDA cost analysis, the cost for the appointment will be around US\$ 700 - US\$ 2000 with the additional annual fee of at least US\$. 1000. In this context, Indonesia is of the view that this amount would be a serious burden for exporters concerned as it would not only decrease the competitiveness of their products in the US market but also create a very heavy burden for manufacturers/processors, holders, labelers, and packers since most of those activities are done by small and medium enterprises. In addition, this requirement would also hamper the “one-time trade” as normally practiced by traders and/or exporters.
10. Based on Article 301 of the Act, the failure to comply with the requirements will be considered as serious violation and the US government has the right to bring the case to the Federal Court. In this context. Indonesia would like to have a clarification as to how the US justify this under the TBT and SPS Agreements.
11. In this regard, Government of Indonesia would strongly urge the US authorities to fully consider our grave concerns of this Act that we believe would create new trade barriers for food export products from Indonesia. And without prejudice to the explanation and clarification provided by the FDA, Indonesia will reserve its right to have further clarification and explanation in the Committee on TBT and SPS-WTO.

**ADDITIONAL COMMENTS OF INDONESIA ON THE USA NOTIFICATION  
(G/TBT/N/USA/32)**

1. Time limit.

The very limited time frame for preparation would be another difficulties that cannot be ignored since the deadline for registration of food facilitation is set on 12 December 2003. And although the deadlines have been set and the Act has been notified to WTO Secretariat, unfortunately no sufficient information have been provided even through the Committee on Technical Barriers to Trade nor Sanitary and Phytosanitary (SPS) of the WTO.

2. Registration

All foreign facilities and food products to be exported to the US should be registered to the FDA. However, the Act has not yet clearly defined the procedures for that purpose. To the effect that the exporters will do, Indonesia is still on the questions so as to what extent the registration done through FDA Website could be used as a credible instrument in order to avoid time consuming and costly.

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